

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i>		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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REV. 4

34TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

*Submitted in Accordance with
Article 54 of the African Charter on Human and Peoples' Rights*

I. INTRODUCTION

1. The African Commission on Human and Peoples' Rights (the Commission) has the honour to present to the Assembly of Heads of State and Government of the African Union (the Assembly), through the Executive Council, the present Activity Report in accordance with Article 54 of the African Charter on Human and Peoples' Rights (the African Charter).
2. The Report covers the period between November 2012 and April 2013. It is structured as follows: introduction; the legal framework and mandate of the Commission; activities undertaken by the Commission; State reporting; resolutions adopted by the Commission; protection activities; promotion missions; the human rights situation in Africa; date and venue of the 54th Ordinary Session of the Commission; finances and administration; implementation of Executive Council decisions; and recommendations.

II. LEGAL FRAMEWORK AND MANDATE OF THE COMMISSION

3. The Commission is an organ established under the African Charter with the mandate to promote and protect human and peoples' rights in Africa. It is composed of 11 Members elected for a term of six years, and eligible for re-election. The members serve in their personal capacity, in an independent and impartial manner.

III. ACTIVITIES OF THE COMMISSION

4. During the period under review, the Commission held the following statutory meetings:

Meeting of the bureaux of the Commission and the African Court on Human and Peoples' Rights, (Addis Ababa, Ethiopia, 29 January 2013)

5. In line with their respective Rules of Procedure, the Commission and the African Court on Human and Peoples' Rights (the African Court) organized the Third Meeting of their Bureaux immediately after the 20th Summit of Heads of State and Government of the AU. The meeting explored different strategies for enhancing the complementary relationship between their respective institutions. The Meeting also identified the challenges they face in implementing their respective mandates, and considered options for resolving these challenges.

The thirteenth Extra-Ordinary Session (Banjul, The Gambia, 19 - 25 February 2013)

6. The thirteenth Extra-Ordinary Session (13th EOS) was convened to deal with the backlog of Communications and other outstanding matters. The Commission considered and adopted the following:
 - twenty-three (23) Communications;
 - two (2) Resolutions - one on the Reconstitution of the Working Group on Specific Aspects Relating to the Work of the Commission, and the other on Elections in Africa;
 - Concluding Observations on the Periodic Report of the Republic of Burundi;
 - Report of the Promotion Mission to the Republic of Togo;

- Model Law on Access to Information for Africa; and
- a statement on the trial and sentencing of 25 Sahrawi civilians by a military court in the Kingdom of Morocco.

53rd Ordinary Session (Banjul, The Gambia, 9 – 23 April 2013)

7. The Session was declared open by the Attorney General and Minister of Justice of the Republic of The Gambia, Honourable Justice Lamin K. Jobarteh, and presided over by Honourable Commissioner Catherine Dupe Atoki, Chairperson of the Commission. All members of the Commission attended the Session, namely: Honourable Commissioners Kayitesi Zainabo Sylvie (Vice-Chairperson), Reine Alapini-Gansou, Faith Pansy Tlakula, Yeung Kam John Yeung Sik Yuen, Soyata Maiga, Mohamed Béchir Khalfallah, Lucy Asuagbor, Med S. K. Kaggwa, Maya Sahli-Fadel, and Pacifique Manirakiza.
8. Six hundred and thirty-two (632) delegates participated in the 53rd Ordinary Session. Of these, one hundred and thirty-two (132) represented twenty-eight (28) State Parties, six (6) represented African Union Organs, thirty-two (32) represented National Human Rights Institutions, nine (9) represented International and Inter-Governmental Organizations, while four hundred and fifty-three (453) represented African and International NGOs as well as other observers.
9. One National Independent Human Rights Commission was granted Affiliate Status, while eight (8) NGOs were granted Observer Status with the Commission.
10. The following State Parties attended the Session: Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, The Gambia, Guinea Bissau, Lesotho, Liberia, Malawi, Mauritania, Namibia, Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Sudan, Swaziland, Tanzania, Tunisia, Uganda and Zimbabwe.
11. The Commission launched the "Model Law on Access to Information in Africa", a prototype law which should be used by Member States to draft, amend or complement their national Access to Information Laws. The Commission also launched the "General Comments on Article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", which enhance the understanding of the Protocol and facilitate its use as a tool for alleviating the disproportionate effects of HIV and AIDS on women in Africa.
12. The Commission considered and adopted reports of the promotion missions to the Republic of Cameroon and the Kingdom of Lesotho. The Commission also issued a statement on human rights violations in the Central African Republic.

IV. STATE REPORTING

13. No State Report was considered during the 53rd Ordinary Session. The Commission therefore welcomes the undertaking by the following Member States to submit their outstanding Periodic Reports for consideration by the Commission: Algeria, The Gambia, Lesotho, Liberia, Tanzania, Malawi, Mauritania, and Niger.

14. The status of submission of Periodic Reports by State Parties as at the end of the 53rd Ordinary Session stands as follows:

Periodic Reports	State Party
Up to date – 8	Angola, Cameroon, Democratic Republic of Congo, Côte d'Ivoire, Mozambique, the Sudan, Gabon and Sahrawi Arab Democratic Republic.
1 Report overdue – 8	Burkina Faso, Burundi, Libya, Namibia, Nigeria, Rwanda, Togo and Uganda.
2 Reports overdue – 6	Benin, Botswana, Congo (Brazzaville), Ethiopia, Mauritius and Madagascar.
3 Reports overdue – 6	Algeria, Central African Republic, Kenya, Tanzania, Tunisia and Zimbabwe.
More than 3 Reports overdue – 15	Cape Verde, Chad, Egypt, The Gambia, Ghana, Guinea, Lesotho, Mali, Mauritania, Niger, Senegal, South Africa, Seychelles, Swaziland and Zambia.
Never submitted a report – 11	Union of the Comoros, Djibouti, Equatorial Guinea, Eritrea, Guinea-Bissau, Liberia, Malawi, Sao Tome and Principe, Sierra Leone, Somalia, and South Sudan.

V. RESOLUTIONS

15. The Commission adopted the following Resolutions during the reporting period:

Session	Resolutions adopted
13 th EOS	<ul style="list-style-type: none"> ✓ Resolution on the Reconstitution of the Working Group on Specific Aspects of the Work of the Commission; ✓ Resolution on Elections in Africa;
53 rd OS	<ul style="list-style-type: none"> ✓ Resolution on the Right to Nationality; ✓ Resolution on Illicit Capital Flight from Africa; ✓ Resolution on Transitional Justice in Africa; ✓ Resolution Appointing Expert Members for the Working Group on Indigenous Populations/Communities in Africa.

VI. PROTECTION ACTIVITIES

16. Eighty-six (86) Communications are currently pending before the Commission. The following Communications were considered during the reporting period:

Session	Communications considered
13 th EOS	<p>I. <u>Seizure</u></p> <p>(a) Seized:</p> <ul style="list-style-type: none"> (i) Communication 427/12: SERAP (on behalf of Daniel Nsofor and Osayinwinde Agbomien) v. Nigeria; (ii) Communication 428/12: Dawit Isaak (represented by Prisca Orsonneau Jess Alcala and Percy Bratt) v. Eritrea;

	<p>(iii) Communication 429/12: The Ngambela of Barotseland and Others v. Zambia;</p> <p>(iv) Communication 430/12: Gabriel Shumba and Others v. Zimbabwe;</p> <p>(v) Communication 431/12: Thomas Kwayelo v. Uganda;</p> <p>(vi) Communication 432/12: Peter Odiwuor Ngoge v. Kenya;</p> <p>(vii) Communication 433/12: Bialufu Ngandu Albert v. Democratic Republic of Congo;</p> <p>(viii) Communication 434/12: Filimao Pedro Tivane (represented by Dr. Simeao Cuamba) v. Mozambique;</p> <p>(ix) Communication 435/12: Eyob b. Asemie v. Lesotho;</p> <p>(x) Communication 436/12: Union Nationale (represented by Maitre Odette Oyane) v. Gabon;</p> <p>(xi) Communication 437/12: Peter Odiwuor Ngoge v. Kenya;</p> <p>(xii) Communication 438/12: Peter Odiwuor Ngoge v. Kenya;</p> <p>(b) Not seized:</p> <p>Communication 422/12: Sudan v. South Sudan.</p> <p><u>II. Admissibility</u></p> <p><i>Admissible:</i></p> <p>(i) Communication 339/07: Patrick Okiring and Samson Aguipo (represented by Human Rights and ISIS - WICCE) v. Uganda;</p> <p>(ii) Communication 387/2010 : Mr. Kofi Yamgnane v. la République du Togo.</p> <p><i>Inadmissible:</i></p> <p>Communication 386/10: Redress (on behalf of Dr. Farouk Mohammed) v. Sudan.</p> <p><u>III. Merits</u></p> <p>Communication 270/03: Access to Justice v. Nigeria.</p> <p><u>IV. Request for deferment of consideration of Communication pending adoption of new constitution</u></p> <p>Communication 355/08: Hossam Ezzat and Rania Enayet v. Egypt.</p> <p><u>V. Request for review of admissibility decision</u></p> <p>Communication 348/07 – Collectif des familles de disparu(e)s en Algérie v. République Algérienne Démocratique et Populaire.</p> <p><u>VI. Communications struck out for want of diligent prosecution</u></p> <p>(i) Communication 290/04: Open Society Justice Initiative (on behalf of Pius Njawe) v. Cameroon;</p> <p>(ii) Communication 336/07: AFTRADEMOP and Global Welfare (on behalf of the Moko-oh Indigenous Peoples of Cameroon) v. Cameroon;</p> <p>(iii) Communication 407/11: Artur Margayan and Artur Sargsyan v. Kenya;</p> <p>(iv) Communication 321/06: Law Society of Zimbabwe v. Zimbabwe.</p>
53 rd OS	<p><u>I. Seizure</u></p>

	<p>(a) Seized:</p> <p>(i) Communication 439/12: Peter Odiwuor Ngoge v. Kenya; (ii) Communication 441/12: Peter Odiwuor Ngoge v. Kenya; (iii) Communication 442/12: Peter Odiwuor Ngoge v. Kenya; (iv) Communication 443/13: Safia Ishaq Mohammed Issa (represented by The REDRESS Trust) v. Sudan; (v) Communication 421/12- Mutassim Billah Khadafi (represented by International Human Rights Commission) v. Libya; (vi) Communication 447/13 - Naima Oun and family (represented by International Human Rights Commission) v. Libya; (vii) Communication 448/13 – Mohamed Milud Daou & family (represented by International Human Rights Commission) v. Libya; (viii) Communication 449/13 - Saadi Khadafi (represented by International Human Rights Commission) v. Libya.</p> <p>(b) Not seized:</p> <p>Communication 440/12: Peter Odiwuor Ngoge v. Kenya.</p> <p>II. <u>Oral Hearings</u></p> <p>(i) Communication 276/03: Centre for Minority Rights Development and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya. (ii) Communication 385/10: ICJ - Kenya v. Kenya.</p> <p>III. <u>Merits</u></p> <p>(i) Communication 302/05 - Me. Mamboleo v. Democratic Republic of Congo; (ii) Communication 335/07 – Dabakorivhuwa Patriotic Front v. South Africa.</p>
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17. The above tables show that during the six (6) months of the reporting period alone:

- twenty (20) new Communications were seized;
- three (3) decisions were adopted at admissibility level - two (2) were declared admissible, and one (1) inadmissible;
- three (3) decisions were adopted at merits level;
- four (4) Communications were struck out for lack of diligent prosecution; and
- two oral hearings were held.

VII. PROMOTION MISSIONS

18. The Commission undertook a joint human rights promotion mission to the Republic of Chad from 11 to 19 March 2013, as part of the Commission's promotion mandate under Article 45 of the African Charter.

VIII. THE HUMAN RIGHTS SITUATION IN AFRICA

19. The human rights situation on the continent continues to be a variegated one, in that while gains have been registered in some areas, challenges still persist in other areas.

(a) Positive developments

20. These include the following:

- i) entry into force of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (the Kampala Convention) on 6 December 2012;
- ii) deposit by the Republic of Cameroon of its instruments of ratification of the Protocol to the African Charter on Human and Peoples' Rights Relating to the Rights of Women in Africa;
- iii) provision of free education to both boys and girls, adoption of a Bill for National Mechanism for the Prevention of Violence Against Children, adoption of a Bill for the Protection of Migrants, and measures taken to facilitate production and distribution of medicines in Algeria;
- iv) signature of the declaration required under Article 34 (6) of the Protocol establishing the African Court, accepting the competence of the Court to hear cases directly from NGOs, as well as from individuals; the introduction of various measures to ensure a healthy environment and the adoption by the Republic of Rwanda of an Access to Information Law, making it the eleventh (11th) AU Member State with an Access to Information Law;
- v) provision of free legal services to prisoners, building of schools, and building of small dams to ensure food self-sufficiency in Niger;
- vi) adoption by the Republic of Côte d'Ivoire of a policy of free health care for pregnant women and children under five years old;
- vii) creation of the National Agency for the Fight Against the Aftermath of Slavery, Integration and Fight Against Poverty (ANLSILP) by the Islamic Republic of Mauritania;
- viii) State Parties gradually moving away from outright denial of the occurrence of acts of torture in their countries, to recognition of its existence and acknowledgement of the need to take measures to prevent its occurrence, and to criminalize torture;
- ix) in Lesotho, the introduction of human rights courses in schools, promulgation of laws which mandate that rape and violence against women be treated as matters of urgency, ratification of the Optional Protocol Against Torture (OPCAT), condemnation of the use of torture by Government, and Government publicly distancing itself from the official who propagated the use of torture;
- x) provision of free sunscreen for people with albinism and the accompanying sensitization campaign in Kenya;

- xi) adoption by the United Republic of Tanzania of measures to stop the killing of persons with albinism, including through the education of local communities and prosecutions to bring the perpetrators to justice;
- xii) re-establishment of Sexual Offences Courts to speed-up prosecution of gender-based violence, establishment of additional forensic laboratories to facilitate processing of cases, and introduction of Family Violence, Child Protection and Sexual Offences Units within the South African Police Service, with dedicated investigators and additional resources to cases involving women and children affected by violence, and the resurgence of police training following the Marikana Mine incident and the incident involving the Mozambican driver;
- xiii) training on human rights for prison officers in Burkina Faso;
- xiv) provision of free legal services to assist prisoners in the Democratic Republic of Congo;
- xv) adoption of a specific code for rape, and domestication of international law by the Republic of Liberia;
- xvi) legal reforms in the Personal Code in Sudan, especially with regards to women;
- xvii) holding of peaceful, free and fair presidential and parliamentary elections in the Republics of Ghana, Sierra Leone and Kenya;
- xviii) in Senegal, the automatic recognition of international norms without the need for domestication, commissioning of an evaluation study on the implementation of Law No. 99-05 of 29 January abolishing female genital mutilation (FGM), and undertaking a sensitization campaign to educate local communities with a view to completely eradicating the practice of FGM by 2015, an open invitation to the Commission to undertake its missions in the country, and establishment of judicial institutions to try Mr. Hissen Habre for crimes committed in Chad, in line with the relevant AU decisions;
- xix) in Zimbabwe, the ratification of the Kampala Convention, adoption of a Code of Conduct holding Political Parties accountable for violence perpetrated by their supporters, gazetting of the People with Disabilities Act, scrapping of hospital fees for vulnerable groups, passing of the enabling legislation for the Zimbabwe Human Rights Commission, and holding of the constitutional referendum;
- xx) the response of the Head of State of the Republic of South Africa – H. E. Jacob Zuma, to an Urgent Letter of Appeal from the Chairperson of the Commission and Chairperson of the Committee for the Prevention of Torture in Africa,

explaining what had taken place during the Marikana Mine incident, which is the only time that a Head of State has responded to an urgent Appeal from the Commission;

(b) Areas of concern

21. These include the following:

- i) almost 10 years (July 2003) after the Maputo Protocol was adopted, only 35 State Parties have ratified it; further to this, not even a single one of the Periodic Reports submitted by State Parties in terms of Article 62 of the African Charter has complied with the Guidelines for reporting under the Maputo Protocol and the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter;
- ii) low levels of ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, and the fact that most State Parties have not made the declaration under Article 34(6) allowing individuals and NGOs direct access to the African Court;
- iii) some State Parties continue to criminalize psycho-social disability, instead of treating it as a health issue;
- iv) water is life itself, and yet not many State Parties are making the provision of safe and potable water a priority;
- v) the emergence of human trafficking on the continent, especially in conflict-affected areas;
- vi) the illicit flight of capital which contributes to underdevelopment in Africa, and the tax havens that facilitate this;
- vii) many children are not in school despite the provision of free and compulsory education in some State Parties, due to socio-cultural and political considerations, among others;
- viii) a tendency on the part of some State Parties to use excessive / disproportionate force during migration control operations, and statements which encourage the stigmatization of migrants;
- ix) the continued existence in some State Parties of laws that criminalize certain types of speech, for example defamation, "insult", and publication of false news which are used to punish disapproved legitimate critical expression;

- x) to date only one African country (Republic of Congo) has a law on indigenous peoples, and only one African country (Central African Republic) has ratified the International Labour Organisation (ILO) Convention 169;
- xi) thirty-six (36) State Parties still retain the death penalty on their statute books although some of these countries observe a moratorium on executions;
- xii) the human rights violations arising from the insecurity in the Democratic Republic of Congo, including recruitment of children into militias and sexual violence against women and girls;
- xiii) the unconstitutional change of government in Central African Republic and the human rights violations which it spawned;
- xiv) the human rights situation in the Sahrawi Arab Democratic Republic which is in and of itself a type of torture in that people are just stuck in camps, with no resolution in sight;
- xv) acts of terrorism committed by various Islamist armed groups in the South of Algeria, Nigeria, Somalia and Mali, which have engaged in beatings, amputations, killings, and the destruction of religious landmarks; and have also triggered mass displacements of people, with the attendant human rights violations experienced by internally displaced persons (IDPs), refugees and asylum seekers.

IX. DATE AND VENUE OF THE 54TH ORDINARY SESSION OF THE COMMISSION

22. The 54th Ordinary Session of the Commission will take place from 22 October to 5 November 2013, at a venue still to be determined.

23. The Commission uses this opportunity to thank those State Parties which have hosted Sessions of the Commission and also to thank the Republic of Angola for offering to host the 55th Ordinary Session of the Commission. The Commission also avails itself of this opportunity to exhort those State Parties that have not done so to seriously consider hosting one of the future Sessions of the Commission, not only to lessen the burden on the Commission's gracious host country, The Gambia, but also to join the ranks of that family of nations which have reaped the benefits of partnering with the Commission in disseminating information and knowledge about the Commission, its mandate, and its activities.

X. FINANCES AND ADMINISTRATION

(a) Staffing

- 24.** Thirty-three (33) new positions were approved for the Commission's Secretariat in 2009. Of these, only 10 have been recruited, comprising 3 Drivers, 1 Receptionist, 1 Protocol Assistant, 1 Accounts Assistant and just 4 Legal Officers. At the same time, the Secretariat lost the services of 2 Senior Legal Officers, who are yet to be replaced. Consequently, the staffing situation at the Commission's Secretariat continues to be a great cause for concern, especially in light of the number of tasks being assigned to the Commission by the Policy Organs, the number of cases being referred to the African Court by the Commission, and the increasing workload arising from the number of complaints being lodged with the Commission.
- 25.** This workload forces the Commission to rely on the services of staff supported by partners, which should not be the case for such a critical Organ of the AU, to which very sensitive matters have been entrusted. The Commission therefore calls upon the recruiting authorities for the Commission to expedite this process.

(b) Funding

- 26.** The budget approved for the Commission for 2013 is US\$ 8, 488,770.00, split into an Operational Budget of US\$ 3, 882,000.00 and a Programs Budget of US\$ 4, 606, 770.00. This budget is not enough to support the work of the Commission. The Commission is particularly concerned that no AU funds at all have been allocated for the Commission's program activities for the 2013 fiscal year, which means therefore that these activities must be funded from external sources.

XI. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISIONS

(a) Mission to the occupied territories of the Sahrawi Arab Democratic Republic

- 27.** It will be recalled that through Decision EX.CL/Dec.689(XX), the Executive Council requested the Commission to undertake a mission to the occupied territory of the Sahrawi Arab Democratic Republic (SADR) with a view to investigating human rights violations and report to this Council. It will also be recalled that this mission was duly carried out, and that the report of that mission was submitted to Council during its 20th Ordinary Session in January 2013. It will be further recalled that the Council decided, through Decision EX.CL/Dec.752 (XXII), that this mission report should be placed on the agenda of the May 2013 Session of Council. This has been done, and the Report is ready for presentation as directed.

(b) Mission to Northern Mali

- 28.** It will also be recalled that the Solemn Declaration on the Situation in Mali, adopted by the Assembly during its 19th Ordinary Session, called on the Commission to investigate the human rights situation in northern Mali, including the atrocities committed against the Malian military and their families in Aguel'hoc in January 2012, and to submit a comprehensive report with concrete recommendations on the way forward. The Malian authorities, who had earlier requested that the mission be postponed to a future date due to the instability and insecurity in the northern part of the country, have indicated that the

mission can now take place. The mission is now scheduled to take place from 3 – 7 June 2013.

(c) African-Led International Support Mission to Mali

29. Further to the request of the Assembly during its 20th Ordinary Session, that the Commission be part of the African-Led International Support Mission to Mali (AFISMA), the Commission is happy to report that a member of the Commission is currently leading the AFISMA human rights monitoring team that has been deployed in Mali since April 2013.

(d) Emoluments and insurance cover for Commissioners

30. The Commission regrets to report once again that despite three Executive Council decisions (Dec.EX.CL/529(XV), Dec.EX.CL/575(XVI), and Dec.EX.CL/Dec.752(XXII) and one Assembly decision (Assembly/AU/Dec.200(XI)), there has been no progress on the matter. This is in spite of Executive Council Decision Ext/EX.CL/Dec.1(XIII) which requests *“the African Union Commission to come up with a proposal to harmonize the remuneration of elected officials of AU organs as per the Executive Council and Assembly Decisions for consideration and adoption during the July 2012 Summit.”*
31. Over and above this, Commissioners continue to work under extremely difficult and dangerous situations, without even having the benefit of insurance cover, since the matter is still to be resolved.

XII. RECOMMENDATIONS

32. Having regard to all the foregoing, the Commission recommends as follows:

To State Parties:

- i) Comply with obligations under Article 62 of the African Charter by presenting reports regularly, in compliance with the Commission’s Guidelines for Reporting under the Maputo Protocol as well as the Commission’s Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter.
- ii) Implement the Commission’s decisions and recommendations on Communications.
- iii) Respond to and implement the Urgent Appeals sent to them by the Commission.
- iv) Respond positively to requests by the Commission to undertake country visits.
- v) Sign, ratify and implement regional and international human rights instruments.
- vi) Consider hosting one of the Sessions of the Commission.
- vii) State Parties, which are not already doing so, to observe a moratorium on the death penalty in line with Resolutions of the Commission.

To the Executive Council:

- i) Increase, both in material and financial terms, support to the Commission to enable it to carry out its work effectively.
- ii) Request the AUC to expedite the harmonization of the remuneration of elected officials of AU Organs, in line with Executive Council Decision Ext/EX.CL/Dec.1(XIII).
- iii) Request the AUC to resolve the issue of insurance cover for Members of the Commission.
- iv) Request the AUC to expedite the processing of the Protocol on the Rights of Older Persons for adoption by AU Member States.

To the Assembly of Heads of State and Government:

Ensure that State Parties to the Charter implement the decisions and recommendations of the Commission.

2013-04-23

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